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NOTES OF THE WEEK

Committal to Convenient Court

The power of magistrates to commit a person for trial at Assizes or quarter sessions not being the court to which committals ordinarily take place, first conferred by s. 14 of the Criminal Justice Act, 1925, and now contained in s. 10 of the Magistrates' Courts Act, 1952, has often been used to great advantage. When a case is ready for trial the sooner the trial takes place the better. Delay for many weeks in custody may be hard on the defendant, and witnesses may become no longer available or may become less clear in their recollection of the facts to which they have to testify. Generally the power has been used without giving rise to complaint, although occasionally we have heard it said that cases have been sent to the Central Criminal Court, a court which is sometimes overburdened by work, by courts far away from London, when a nearer court might have been used.

In delivering judgment in the Court of Criminal Appeal in *R.* v. *Streams* [1956] 3 All E.R. 421, the Lord Chief Justice made observations for the guidance of magistrates in exercising this power. The appellant had been committed for trial by justices in Reading for an offence alleged to have been committed in that town. The Assizes had just been held there, and in order to avoid a long delay the case was sent to Hereford Assizes, possibly because that city is on the same circuit as Reading. However, the learned Judge found it impossible to deal with the case at Hereford, and sent it on to Shrewsbury, where it was tried. Lord Goddard pointed out that this must have involved considerable expenditure of public money, whether the matter was dealt with at Hereford or at Shrewsbury, both of which are a long distance from Reading, and the question of the circuit was not important. What would have been more convenient would have been to commit to the Old Bailey, which is much nearer. The Lord Chief Justice did not suggest that cases should be committed there very readily from the Home Counties but that when the circumstances demanded it this course should be adopted, and at the Old Bailey there would be Judges willing to deal with such a case.

Sentence on Aged Woman Quashed

At p. 562, *ante* we commented upon the case of an aged woman who was sent to prison because the magistrates thought it in her best interests, feeling assured that she would be well treated there.

The Western Morning News reports a very similar case, in which an appeal to Devon quarter sessions against sentence was successful, an order of conditional discharge being substituted for a sentence of six months' imprisonment. The appellant, who was 79 years of age, had pleaded guilty to charges of obtaining money by means of a forged pension document and had asked for three other cases to be taken into consideration.

The learned chairman of quarter sessions said that the sentence showed the humanity of the magistrates who were acting in the best interests of the woman, and added "The reasons for the lower court sending her to prison were that she would be committed to the care of the prison hospital and that it would be in her own interests. But while we appreciate the humanity of them, we think the reasons are not good.

"The court will grant a conditional discharge to be of good behaviour, and no doubt arrangements can be made to provide the care needed."

A probation officer said that accommodation would be found for the woman in an old people's home.

The Public Pays

According to a report in *The Birmingham Post*, since 1949, when the parents were sent to prison for neglecting their family, Walsall ratepayers have paid £6,220 in the upbringing of a miner's three children. In the same period the father had contributed £45 to their upkeep.

The father, summoned before the Walsall magistrates' court in respect of arrears under three contribution orders of 13*s.* a week each, was said to be earning an average weekly wage of £7 5*s.* 7*d.* but to be capable of earning much more at the coal face if he would work. The chairman of the bench told the defendant he could double his wages if he would only work, but he was bone idle.

The defendant's offer to pay off 15*s.* a week was accepted with three month's imprisonment in case of default.

As the man had been many times sent to prison on account of arrears it is obvious that the magistrates were not satisfied that he was trying to comply with the orders, but regarded him rather as a man who could pay but would not. The chairman is reported as using the word " disgusting," which is by no means too strong. Naturally the local authority is not going to allow the children to suffer through parental neglect or idleness, but the expense to the public is a burden which they ought not to have to bear. The trouble is that a man cannot be made to work if he would rather go to prison.

Prison at 15

Everyone is agreed about the desirability of keeping young offenders out of prison, and the legislation of recent years has imposed definite restrictions upon the courts in this matter. Nevertheless, occasions do arise when there seems to be no alternative.

At East Kent quarter sessions, a boy aged 15 was sent to prison for nine months, he having admitted a charge of larceny and asked to have 20 other cases taken into consideration. It was stated that he had broken out of three approved schools and a remand home in less than a year.

How near he is to attaining the age of 16, and whether he will be transferred by the Secretary of State to a borstal institution, we cannot tell. What the case suggests is that there is something to be said for the suggestion made at times that the maximum age for borstal should be lowered to 15. There are a few boys of that age who cannot be effectively dealt with in approved schools, and for whom a short sentence to a detention centre does not appear suitable, but who seem to be in need of longer discipline and training.

Foster Parents and Local Authorities

When a local authority boards out a child in its care it is not divested of responsibility or of the right to have some say in the way the child is looked after by its foster parents. That is obvious and proper. It must have the power to change foster parents in certain circumstances, having in mind always what is best for the child.

The press has reported that the Wallasey council children's committee decided to remove two children, aged respectively eight and seven, from their foster parents on the ground that the wife had taken a part-time job, so that the children would be left alone for some hours on two or three days a week They had declined to give a written guarantee that the wife would give up work. The husband is stated to have said that he did not think the council ought thus to interfere in the private lives of foster parents.

Without going into the merits of this particular case, of which we know very little, we would say we do not regard the action of the council as such interference. While it is true that many mothers go out to work and leave their children alone for long periods without having them taken away, that by no means shows that there is never any objection to such an arrangement. The point is that parents have the strongest claim to the custody of their own children, and may not be deprived of it unless there are grave reasons. Foster parents have no such strong claim, and if it will be for the good of the child to be given into the care of someone else they may have to relinquish care of them even though they have become attached to them. The local authority will weigh the advantage of a change against the disadvantage of some upheaval in the life of the child and will not be unmindful of any attachment that may have grown between child and foster parent. The decision may be difficult, and each case is an individual problem. It could hardly be possible to lay down hard and fast rules.

Crash Helmets

The cost to the country in loss of manpower and in hospital treatment due to accidents to motor cyclists and their pillion passengers is enormous. It is not surprising that there have been demands in some quarters that the use of crash helmets should be made compulsory. It might even pay the government, or perhaps the insurance companies, if the helmets were provided free and then their wearing made compulsory. Many cyclists are, fortunately for themselves and the public, seeing the need for wearing them. The design of the helmet is of course a matter of vital importance and a recent article in the *Lancet* is timely as drawing attention to the subject but this journal is not a periodical which is read by those primarily involved and it would be well if some of the points raised in the article were put in one of the journals which they do read. There is evidence that the wearing of a crash helmet reduces both the proportion of fatalities due to head injuries and the proportion of major head injuries by roughly 40 *per cent*. This figure is worth broadcasting by road safety organizations. But a crash helmet designed against brain injury must be tough to prevent penetration and relatively rigid. The helmet must be as light as possible, comfortable to wear and efficiently secured to the head. It is pointed out in the article that when the efficiency of a helmet is called into question as the result of an accident, and this is sometimes at an inquest, great emphasis is laid on the fact of its having passed or failed to pass the specification of the British Standards Institution. Usually, if it has passed, the manufacturer is exonerated from all blame and the injury is accepted as inevitable.

The writer of the article is satisfied that research on materials has provided the necessary knowledge for the construction of helmets narrowly approaching the theoretical ideal and that the principle limit to the efficiency of commercial helmets need only be that imposed by economic considerations. In his view it is impossible to resist the conclusion that efficient crash helmets could be put on the market at a commercially satisfactory price.

Practical Christianity on the Roads

The *Manchester Guardian* reports an address given by the Bishop of Chester at a recent diocesan conference. He laid down three rules the universal adoption of which would, he claimed, lessen considerably the dangers on our roads. They were:—

1. Never take risks.
2. Always drive defensively on the assumption that some other road user may do something unexpected, possibly foolish.
3. Never forget your good manners, in other words, put your Christianity into practice when driving or walking on our roads.

We must all agree that there is nothing revolutionary or unreasonable in these proposals but how often, unfortunately, do road users of all kinds fail to work by these simple rules. The law, as represented by the police and the courts, can try to bring to justice and ensure the punishment of those who are found out when they behave badly, but the percentage caught is not a large one and many acts of bad " roadmanship " are committed without the offender being called upon to account for his conduct. If, as the Bishop of Chester urged, we could put Christianity into practice on the roads how different the picture would be. There are many road signs and many exhortations to road users on notice boards all over the country; would there be any harm in adding one more, in large letters, "Always do unto others as you would be done unto "?

The Driver who is "Sleeping it Off"

We read in *The Birmingham Post* of October 1 the report of a case in which a defendant was convicted of being "drunk in charge" of a motor vehicle when he was found, admittedly the worse for drink, in his car in a hotel car park. He was fined, but the magistrates found special reasons for not disqualifying him. The chairman is reported to have said "We think that you were telling us the truth when you say you had no intention of driving, but had merely got into the car to sleep off the drink."

We call attention to this case because on November 1 s. 9 of the Road Traffic Act, 1956, came into force, and by the proviso to subs. (1) it is enacted that a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving so long as he remains unfit to do so *and* that he had not driven on a road or other public place after becoming unfit. It would appear that the case to which we have referred is one in which the defendant might well have tried, after October 31, 1956, to take advantage of the proviso. The difficulty courts may have, in construing this particular provision, is how to make up their minds with reasonable certainty as to the intentions, often somewhat wayward and unpredictable, of a drunken person so as to be able to say that he has proved that there was no likelihood of his driving.

Aiders and Abettors in Road Traffic Offences

We have commented in the past on the difficulty which courts have felt in deciding what was the effect of s. 11 (4) of the Road Traffic Act, 1930, which enacted that the offence of the aider and abettor in a case of dangerous driving if "it is proved that he was present in the vehicle at the time of the commission of the offence shall be deemed to be an offence in connexion with the driving of a motor vehicle." It could be argued that the necessary inference from this was that the aider and abettor in other offences under that Act was not convicted of any offence in connexion with the driving of a motor vehicle and was not liable to be disqualified or to have his licence endorsed. This interepretation seemed to be in conflict with the wording of s. 35 of the Magistrates' Courts Act, 1952, which enacts that the aider and abettor "shall be guilty of the like offence" and seems, therefore, to make him liable to the same punishment as the principal offender and to suffer any other consequences which may follow conviction of the principal offender.

We think it worth while, in view of the above, to call attention to an amendment of s. 11 (4) of the 1930 Act, effective from November 1, 1956, which is made by para. 13 of sch. 8 of the Road Traffic Act, 1956. The effect of this amendment is to make s. 11 (4) read as follows:—"Where a person is convicted of aiding, abetting counselling or procuring, or inciting the commission of an offence under this section then *unless it is proved that he was present in the vehicle at the time of the commission of the offence the provisions of this Part of this Act as to disqualification for holding or obtaining licences shall not apply to his conviction of that offence.*" The effect of the subsection as amended is quite clear and avoids the difficulty of interpretation which was introduced by the former wording.

We should mention also s. 26 (3) of the 1956 Act as follows:—"without prejudice to the powers conferred by the said subs. (1) so much of the Act of 1930 as provides that a person convicted of an offence shall be, or shall be ordered to be, disqualified for holding or obtaining a licence shall not apply to a person convicted of aiding, abetting counselling or procuring, or inciting to, the commission of the offence." The said subs. (1) is s. 6 (1) of the 1930 Act. Section 26 (3) does not affect compulsory endorsement, and seems also not to touch the very unlikely case of the aider and abettor in an offence under s. 9 of the 1956 Act, second or subsequent conviction. The disqualification in his case would be compulsory, in the absence of special reasons.

Foreign Divorce and English Maintenance Order

Wood v. *Wood* (*The Times*, October 20) was an appeal to the Divisional Court (The President and Collingwood, J.) from the refusal of a metropolitan stipendiary magistrate to discharge a maintenance order after the husband had been granted a divorce in Nevada. It was admitted that the divorce was valid.

It appeared that the husband had gone to America accompanied by a woman who was stated to be pregnant by him, and when he invited his wife to join him she refused. He obtained a divorce in Nevada after three years' separation. There was no evidence before the learned magistrate about rights of maintenance and alimony in Nevada.

The magistrate dismissed the husband's application to have the order discharged, holding that the wife was justified in her refusal to join her husband, and he considered that if he discharged it the husband would be benefiting by his own wrongdoing.

Collingwood, J., delivered the judgment of the Court allowing the appeal. The Court held that if a valid foreign divorce gave a wife no right to maintenance an English maintenance order ought to be discharged. If under the foreign law the rights of the wife were different from her rights under English law, she should be left to obtain those rights in the foreign courts. This may seem a hard case in which, on the face of it, the merits were on the side of the wife, as the learned magistrate found. However, that does not dispose of the point of law, upon which the Divisional Court was following earlier decisions.

Enforcement of Maintenance Orders out of Wages

By a small majority, the annual meeting of the Magistrates' Association decided to support a recommendation that a Committee of Inquiry should be set up to consider the Scottish system under which deductions can be made from wages as a means of securing compliance with maintenance orders.

We welcome this move, in the hope that it will lead to action of some kind. If maintenance out of wages works well in Scotland why should it not work equally in England? If it does not, we should like to learn the reasons. We know that it has been found to be satisfactory in some instances in this country on a voluntary basis, and that employers are said not to have objected. We believe it could be made to work as well on a statutory basis, and neither workers nor employers would find it troublesome. If it was successful there would be fewer committals to prison, and women would receive more of the money due to them.

Approved School Order: Naming the Local Authority

In *Isle of Wight County Council* v. *Warwickshire County Council* [1953] 1 All E.R. 525; 117 J.P. 160, where the appeal was allowed with some regret, it was pointed out that where a local authority which had been named as the authority within whose district a person to whom an approved school order related appealed, and showed that the person did not reside within its district, and that the offence was not committed within its district, but could not show that the person named in the order resided in the district of another authority the Court had no power to substitute for the appellant authority the authority in whose district the offence was committed.

A similar point arose in *Barnsley Corporation* v. *Lancashire County Council* (*The Times*, October 19) and again the result showed the unsatisfactory position created by s. 90 (2) of the Children and Young Persons Act, 1933. The boy who was the subject of the approved school order had lived with his parents in Lancashire until a fit person order was made by a juvenile court in 1944, and thereafter he had been in institutions until in December 1955 an approved school order was made in consequence of an offence. The boy's parents had moved to Barnsley in 1947. He never went to his parents' address in Barnsley and at no time resided there. Nevertheless, the magistrates decided that the boy's place of residence at the time of the making of the order was where his parents resided in Barnsley, and accordingly named Barnsley corporation in the approved school order.

In the Divisional Court Hilbery, J., in the course of his judgment, said that the Act did not say that the child should be deemed to reside with his parents, wherever the parents might be, which was what the justices had decided. If at the time of the making of the order, the home where he actually lived before the times when he had been in an institution no longer existed, it was not a place where the child could possibly reside at the time when the order was made, and therefore could not be a place of residence. Disregarding periods in an institution the only residence in which the child had actually lived had ceased to exist. The magistrates should have arrived at the conclusion that the residence of the child was unknown and should have named in the order the local authority within whose district the offence was committed.

An Unsatisfactory Result

The learned Judge went on to say that the result of the appeal was certainly not satisfactory, because although the Court were of opinion that the magistrates were mistaken in holding that the child's place of residence was Barnsley, the Barnsley corporation could only appeal against being named in the order on the ground that the child's place of residence was within the district of another authority. It was not open to the corporation to appeal on the ground that, as the Court had found, the child's residence was not known and that the authority named in the order should have been that within whose district the offence was committed. The Barnsley corporation therefore remained as the authority named in the order.

The Lord Chief Justice added that the injustice resulted from the fact that s. 90 of the Act which gave an appeal was so limited that it had omitted to deal with the situation where the place of residence was unknown and would seem to be an obvious *lacuna*, the result, no doubt of a slip on the part of the draftsman.

The Court drew the attention of the appropriate department to the unsatisfactory position.

Tests for Drunkenness

A great deal has been said and written about the need for preventing people who have had too much to drink from driving motor vehicles on our crowded roads, and courts are properly urged to deal with those convicted of offences under s. 15 of the Road Traffic Act, 1930, in a manner which will discourage them, and others, from committing such offences in future. But if the courts are to deal seriously with those convicted of such offences they need to be sure that the evidence of "drunkenness" is satisfactory. It is somewhat disconcerting, therefore, to read that a distinguished surgeon said in evidence recently that "medical science cannot sort out the difference between concussion and being under the influence of alcohol." Reference to this evidence is made in an article in the *Newcastle Journal* of October 19, which reports suggestions made by the same surgeon in a letter to the *British Medical Journal*. These are that drivers suspected by the police of drunkenness should be taken to a hospital for examination and not to a police station, and that the medical examination should be made by at least two, or preferably three, "medical men of senior status." He argues that courts are greatly influenced in such cases by the medical evidence and urges, therefore, that "the quality of the medical examination on which such a diagnosis rests should be beyond all doubt."

Before it would be possible to consider such suggestions on their merits it would be necessary to inquire whether they would work satisfactorily in practice. Would there always be available at a hospital the two or three medical men of senior status to examine anyone whom the police might bring in at any time? If not, how long would it take to assemble them for the purposes of the examination? The value of medical evidence in such cases is greatly reduced if the examination does not take place fairly soon after the incident on the road which leads to the defendant's arrest, and indeed delays which often occur before a doctor arrives at the police station are said now sometimes to lead to a failure to certify a person whose behaviour and condition at the time of his arrest were very different from those on which the doctor based his opinion. It is a very difficult subject and for that reason any suggestions seriously put forward by competent people are worthy of consideration.

Election Fees

In view of the higher salaries now being paid to local authority clerks it is not surprising that the Manchester city council formed the opinion that, as a matter of principle, the remuneration paid to every officer should relate to all the duties or services which any such officer was required to perform by virtue of his office. The council suggested, therefore, that the government should agree that the personal fees payable to the clerk of a local authority under the Representation of the People Act, 1949 should be paid to the authority. The matter was referred to the Association of Municipal Corporations, and the matter is dealt with in the last report of the General Purposes Committee which did not dissent from the general principle of the clerk to a local authority receiving an inclusive salary but pointed out that the issue raised is really that of the clerk in his capacity as a statutory officer under the Act of 1949. Either the town clerk or the county clerk is the registration officer. Any expenses properly incurred by him are payable by the local authority with a 50 *per cent.* contribution from the government. Personal fees are payable in respect of duties as registration officer or returning officer. It is suggested that the statute clearly intended to make an individual responsible for the preparation of the register and to ensure that he did so by providing penalties in default. The committee accepted the view, taken by Parliament, that a person who performs this task must be placed under an obligation, paid for his services and punished in default.

The clerk has no option in the matter. The committee did not consider that if the views of the Manchester city council were accepted, the obligations imposed by the statute could be enforced on the clerk. Nor was it considered that the obligation to prepare the register could be placed upon the local authority. The person responsible for the preparation of the register must be outside the influence of party politics. The committee were unable therefore to support the Manchester view nor did they feel that it would be in the best interests of the country as a whole to alter a system which has worked so well.

REGISTER ENTRIES

By F. G. HAILS, *Solicitor, Clerk to the Dartford Justices*

The Magistrates' Courts Rules, 1952, r. 54, provide that " the clerk of every magistrates' court shall keep a register in which shall be entered:—

(*a*) a minute or memorandum of every adjudication of the court;

(*b*) a minute or memorandum of every other proceeding or thing required by these rules or by any other enactment to be so entered."

The register is to be in the form prescribed by rule, and the form is laid down by the Magistrates' Courts (Forms) Rules, 1952, form 117. The nature of the offence is to be clearly shown, and its date stated, and the entries are to be signed by a justice before whom the proceedings to which they relate took place. If the proceedings took place " elsewhere than in a petty sessional court-house " a signed return may be transmitted by a justice who conducted the proceedings, and the clerk must then " enter the return in the register." Any justice of the peace, or person authorized by a justice or by the Home Secretary, may inspect the register " during reasonable hours."

So far as proceedings in the juvenile court are concerned, a separate register is to be kept, Summary Jurisdiction (Children and Young Persons) Rules, 1933, r. 25, the form being No. 47 in the schedule to the rules, whilst adoption applications are to be entered in a third register, Adoption of Children (Summary Jurisdiction) Rules, 1949, and 1952, r. 27, which is to be " kept in a place of special security," r. 28, the form here being No. 7 in the schedule to the rules.

In addition, the clerk must keep a register of justices' licences in his district " in such form as (the licensing justices) may prescribe ": Licensing Act, 1953, s. 40, and a register of clubs occupying " premises habitually used for purposes of the club where intoxicating liquor is supplied to members and their guests ": Licensing Act, *supra*, s. 143. Here a form has been prescribed by the Home Secretary in S.R. & O. (1902) No. 797. The licensing registers are also subject to different rules as to inspection, but these need not be detailed here.

Now although every clerk to justices, and every senior assistant to every clerk, must be very familiar with all these registers, they very seldom attract the bright light of publicity, and it occurs to us that some sort of interchange of ideas might not be unprofitable. Our main purpose is to deal with the registers of courts of summary jurisdiction, but at the same time we may consider briefly one little problem as to where certain entries should go, and we will pose the question in the style of a Law Society's examination: " Q. You are clerk to the justices for the Claypit petty sessional division of Loamshire, and your licensing justices are holding a transfer sessions, which is to be followed by a petty sessional court. It is your duty to keep the court registers: in which register (if any) would you enter:—

(*a*) an application by John Mudd for the transfer to him of the publican's licence of the Lads of the Village.

(*b*) an application by William Cole for a protection order in respect of the beer on licence of the Bung Hole.

(*c*) an application by George Tilth, the holder of the publican's licence of the Legbreakers Arms for a special exemption order on the occasion of the Claypit Darts League presentation of prizes.

(*d*) an application by Jonathan Marl, the holder of the publican's licence of the Cockspurs for an occasional licence on the occasion of the Loamshire Show?"

As to the answer we think there is no doubt that the majority of clerks say that all should go in the register kept under r. 54 of the 1952 rules, and that in addition (*a*) and (*b*) should be entered in the Register of Licences. A minority would say that it is not their practice to enter (*c*) and (*d*) in any register, but should (*a*) be entered in the register under r. 54, the court register as it is very often called? This register must contain *inter alia* a note of " every adjudication of the court," whilst an application for the transfer of a justices licence is heard by the licensing justices at one of the transfer sessions appointed by them during the general annual licensing meeting, which is certainly not a court: *Boulter* v. *Kent JJ.* (1897) 61 J.P. 522. Moreover, the Licensing Act, 1953, s. 21 (3) provides that any licensing justices enabled to hear transfer applications shall have the same power to compel attendance of witnesses, and so forth " as if the hearing of the application were a hearing of a complaint by a magistrates' court acting for the petty sessions area constituting the licensing district." In spite of the definition of the phrase in the Magistrates' Courts Act, 1952, s. 124, we think that the implication of the section of the Licensing Act, which we have quoted is that transfer sessions are not magistrates' courts. Of course the transfer must be recorded in the Register of Licences, as must the grant of a protection order: Licensing Act, 1953, s. 40, but a protection order application is made to " justices of the peace acting for the petty sessions area " in which the licensed house is situate (1953 Act, s. 23 (1)) and the power is exercisable " by the number of justices, and in the place, required by the Magistrates' Courts Act, 1952, for the hearing of a complaint ": (1953 Act, s. 23 (13)). The power to grant a special order of exemption, and to consent to the grant of an occasional licence is similarly vested (Act of 1953, s. 108 and s. 148 (4)). Without arguing the matter fully here, we think that s. 124, *supra*, of the Act of 1952 is sufficiently wide to include sittings of justices for this purpose in the term " magistrates' courts," and that therefore these three matters should go in the court register.

But to descend from this rather abstruse question to simpler matters, let us turn to the form of the register: Column 1 is headed " Number," and even this presents room for variation, for in some courts the number of the adjudication runs serially through each year, in others it is divided quarterly, elsewhere each day starts a new series, and often when a case is adjourned it re-appears under its original number. There is no harm in these differences: we do not even advocate uniformity, but merely draw attention to them. Column 2 is for the " Name of Informant or Complainant," and whilst this should be simple enough we have seen incorrect entries. It is far from rare for this column to be entered with the name of the police force operating in the area rather than that of the individual officer who lays the information: an unincorporated body cannot be an informant, and even in the case of a corporation, the process must be taken by some authorized person on its behalf, so that where the Bogborough County Borough wishes to prosecute, Column 2 should read either " Thomas Fenn on behalf of Bogborough County Borough," or if economy of words is desired " Bogborough County Borough by Thomas Fenn."

So far as Column 3 is concerned the clerk has no option in preparing the register but to follow the information or complaint, but the next one, 4, Nature of Offence or Matter of Complaint, does allow a little ingenuity, for r. 54 (3) provides not that the process shall be rigidly copied but merely that the offence shall be

clearly shown. Thus one can dispense with all the particulars of the " gent's red Rudge racing pedal cycle " of the police information or charge sheet and put simply " a bicycle." It is quite impossible in the space of such notes as these to go into various offences and the methods of describing them, but a word of advice may be permissible: it is as well to stick to the same form for each offence as far as possible, so that one entry does not read " stealing a watch " and the next, against maybe the same defendant, " larceny of a pistol." In some courts it is customary to quote the statutory authority for the offence: this is certainly helpful for separating revenue penalties from the rest when preparing the Fees and Fines Account, but it seems to us to have little else to recommend it: after all, " stealing a watch " is one offence, and " stealing a watch value £10 in the dwelling-house of Richard Roe " is quite obviously a different one without a mention of the Larceny Act, 1916, s. 2 or s. 17. So far as proceedings by complaint are involved, we think it necessary to give such particulars as will make the matters alleged clear, for example, in a matrimonial case, the entry might read:—

" Complaint for orders under the S.J. (S & M) Acts, 1895–1949 on the grounds of
(*a*) Desertion since (date)
(*b*) Wilful neglect to maintain
Children of marriage: Petunia Pansy Smith born (date)
Barry Smith born (date) "

The next column is reserved for the date of offence or matter of complaint, and we shall pass this over and come to Column 6, headed " Plea or consent to order." For our part, we keep this column for the following data:—

G or N.G. where the defendant appears and pleads to an information.

N.A. where there is no appearance to an information.

A. where the defendant appears to a complaint, N.A. when he does not.

C. where a defendant appears to a complaint and consents to an order in those few cases where this is permissible, and N.C. (no consent) where in such cases he appears and does not consent.

We do not agree with the common practice of preceding the plea in cases triable by jury with the word " consents " to indicate that the defendant has consented to summary jurisdiction. For one thing, " consents " in this column might be confusing in view of the heading of the column, and for another we think that this is more adequately indicated in the adjudication column, number 7.

This is perhaps the most important of them all, for there are many things to be indicated there more than the mere indication of the sentence of the court. For instance, rule 11 of the 1952 Rules lays down that a decision not to commit an accused for trial is to be entered in the register, obviously in this column, as follows:—

" Discharged M.C. Act, s. 7 "

Rule 15 of the same rules provides not only for the entry of the plea, but also the defendant's " election to be tried summarily." In some, if not all, of the metropolitan magistrates' courts it is also the practice to indicate the section under which the court assumes jurisdiction, and we have also followed this usage for some years. Once summary jurisdiction is assumed, or in a summary case at the outset, the plea is taken, although it is occasionally necessary to record at this stage an amendment of the information. The wording of an entry to cover any amendment must vary with each case, but all we suggest is that it should be such that by reading the entry and the information, or charge sheet together, it should be clear what the new allegation is. Then it will be necessary to enter the main finding of the court: if the defendant has pleaded guilty, or consented to an order in cases where he can do so, it is not necessary to do anything further, other than to record the sentence or order of the court, but if he pleads not guilty or does not appear to an information then the decision " Found guilty " should be entered, and in the case of all complaints save those mentioned in the Magistrates' Courts Act, 1952, s. 45 (3), then it should be specifically stated that the complaint is found proved, followed by a note of the decision. But there are those troublesome cases where there is some variation between the information and the evidence, and where the court has power to find that the charge adduced is proved: take a simple case where a defendant is alleged to have stolen £10, and the evidence substantiates a smaller sum, say £7: in such case the finding would be " Found guilty as to £7." Similarly in the case of complaints: if we could revert to the form of register entry of complaint for married woman orders which we have given, if only desertion is proved, then the entry should be: " Complaint found proved as to desertion only."

Before turning to what should be recorded following the finding that allegations are proved, some notice of the form of entry on a dismissal is necessary. It is always possible to enter merely " Dismissed," but on the other hand an explanatory entry of the grounds of dismissal is probably more satisfactory. Thus if information is dismissed after hearing the evidence of the parties the entry is " Dismissed, M.C. Act, 1952, s. 13 (2)." If the information is dismissed because the informant fails to appear this is made perfectly clear by the words: " Dismissed, M.C. Act, 1952, s. 16 (1)." If a similar result follows when neither party appears then—" Dismissed, M.C. Act, 1952, s. 17." In the case of complaints the same wording is apposite, substituting ss. 45 (2), 48, and 49 respectively.

After the finding on the information or complaint comes the method of dealing with the case. There is no difficulty in recording a fine or sentence of imprisonment on a defendant aged over 21 years, but if a youth aged between 17 and 21 years is sent to gaol the reasons for doing so must be specified in the register (1952 Act, s. 107 (3)). Where no time is allowed for payment of a fine and the court issues a warrant of commitment forthwith the reasons for so doing must be stated in the warrant (1952 Act, s. 69 (2)), and although there is no express need to enter these in the register many think it wise to do so in order that a record of the reasons, signed by a justice adjudicating may be preserved in the court: after all the warrant goes to the prison with the offender. If a magistrates' court allows time to pay but at the same time sees fit to " impose a term of imprisonment in the event of future default " then it must " state its reason for doing so ": 1952 Act, s. 69 (3); and the court must record this reason in the register as part of the adjudication (r. 44).

Then there are all the special reasons: *R.* v. *Recorder of Leicester, ex parte Gabbitas* [1946] 1 All E.R. 615; 110 J.P. 228 indicated that where a magistrates' court finds special reasons for not imposing a compulsory disqualification for holding or obtaining a driving licence it must state the reasons in court and these must be shown in the register. It is not unreasonable to suppose that the Divisional Court would extend this provision to any finding of special reasons or circumstances. It may sometimes exercise the ingenuity of a clerk to condense such reasons, by way of a précis, into the available space.

If offences admitted by the accused are taken into consideration then it is recommended by the Justices' Clerks' Society that the register adjudication should show this. We think that a court register should be so drawn that any document embodying the court's decision could be compiled with reference to the original information or complaint, and to the register itself: it would be possible to continue at length on this theory, but it may

be that a few examples will make our meaning clear. First of all, we shall deal with probation orders: the Magistrates' Courts Rules, 1952, r. 26 provide precedents for register entries of absolute or conditional discharges, but the rules are silent as to the entry where a probation order is made. Frequently the adjudication is in a form somewhat similar to the following: "Probation order for (up to) three years," but in view of the remarks of Lord Goddard reported in 35 Cr. App. R. 207 (*see* also (1952) 116 J.P.N. 145) it seems wise that the requirements of the order should be entered in the register: most certainly any special requirement should be specified.

Adoption orders also call for a complicated adjudication if every requirement of the order is to be embodied in the adjudication, which we suggest should be in the following form:—

"Adoption order granted: infant to be known as (new names). Infant found indentical with (old names) to whom entry numbered made on (date) in Register of Births for registration district of , sub district of in the County of relates and *or* (probable) date of infant appears to be . Registrar-General to make appropriate entry in Register of Births *or* in Adoption Register. Applicants to pay costs."

Here again, various possibilities, such as dispensing with consents and sanctioning of a reward, have been omitted.

Our object in writing these notes, which are by no means exhaustive, is to try to provoke an exchange of ideas. So far as we know the subject has never been dealt with in any text-book, nor are there any precedents to be found: this is understandable, for any publication on this subject could have but a limited sale. The only possible method of obtaining guidance is by publication of an article in a legal journal, which will inevitably produce criticism if we are adrift in our ideas: it is perhaps significant that neither *Stone* (88th edn.) nor any other text-book known to us gives any guidance on the form of register entries.

LOCAL GOVERNMENT RE-ORGANIZATION

By GRÆME FINLAY, M.P., *Barrister-at-Law*

The recent Government White Paper on Local Government (Areas and Status of Local Authorities in England and Wales, published last July (comd. 9831)) lays it down that the need for reorganization should be judged according as to "whether it provides a *stable* structure, capable of discharging *efficiently* the functions entrusted to it, while at the same time maintaining its *local democratic* character" . . . (para. 15). In order to enable an appropriate procedure for reviews it is proposed to create two new Local Government Commissions, one for England and one for Wales. Their main tasks would be to make recommendations to the Minister of Housing and Local Government in regard to the creation and extension of county boroughs, any necessary alterations in county boundaries and the organization of local government in the conurbations (para. 22).

The White Paper goes on to particularize the principles to be followed by the Commission in relation to the different types of local authority with special consideration for "conurbations."

How do these intentions fit the many-dimensional problem of 1956?

(i) The requirement of stability.

The White Paper enjoins "a stable structure."

The present pattern of local government in England and Wales was, of course, established on its present footing by the Local Government Acts of 1888 and 1894.

In the words of the White Paper contained in para. 16: "since the present system of local government was established there have been far reaching alterations in the distribution of population and industry, the scope and cost of services, the speed of communications and the relationship between central and local government . . ."

In spite of all these far-reaching changes, however, taking everything into account the White Paper concludes (perhaps rather surprisingly) that it does not necessarily follow that radical changes in organization are needed. ". . . There is, therefore, no convincing case for radically reshaping the existing form of local government in England and Wales. What is needed is to overhaul it and make such improvements as are necessary to bring it up to date . . ." (para. 17).

Certainly on the issue of stability the existing institutions have come up to proof very successfully. Boundary changes have been comparatively rare (*e.g.* after the Local Government (County Boroughs and Adjustments) Act, 1926 only one new county borough—Doncaster, was created and after that there were no applications until Ealing, Ilford and Luton introduced their private Bills (1949–1953).

All the same, the sporadic town versus county warfare over boundary issues has introduced bad feeling and uncertainty between borough and county governments. The White Paper proposes that after the issues in a particular area have been settled, there should (apart from reviews of country districts) be a stand-still for a period of years, during which no further changes would normally be made. No doubt this is a healing move.

However it is, I think, clear that the structure of local government is in general, fundamentally sound. It has effectively withstood the stresses of two major wars and has seen to it by and large that the houses are built, the highways maintained, the streets lighted and policed, the sewerage treated and the water supplied to millions of people, who are normally quite content with their performance and, indeed, inclined to take it for granted. It is when we come to examine the finer aspects of efficiency (which includes, of course, economy) and of local democracy, that the picture is not so persuasive. (The very germane aspects of functions and finance are not considered by the White Paper and are being investigated separately by means of consultation between interested ministries and an independent departmental inquiry of the Minister of Housing and Local Government respectively).

Bearing on these the following appear to be factors for discussion:—

(i) the increased process of centralization including the tendency to entrust functions to regional agencies.

(ii) The system of vigorous and detailed financial control by the central government. The volume of local authority spending.

(iii) The quality of local government representatives and candidates.

(iv) The need for more specialist officers to advise local representatives upon increasingly technical powers and duties.

(v) The practical workings of " local democracy." Apathetic local government electorates. The effect of the party system of government.

Since the war central and regional agencies have been substituted for the local organs of government to a very great extent (for example the local authority health services have, with certain exceptions devolved upon regional hospital boards and their subordinate hospital management committees under the National Health Service and the local authorities former public assistance functions have been taken from them and given to the National Assistance Board). This has resulted in the loss of interesting functions by the local authorities and, correspondingly, good candidates for local office have gone instead to the regions, etc.

So far as health is concerned, however, the Guillebaud Report (Report of the Committee of Inquiry into the cost of the National Health Service (Cmd. 9663—January 1956)) holds out no support at all for renascent local health services.

In para. 730, the report states that the committee do not feel that a convincing case has been made out for transferring the hospital service to the local health authorities. Later on the report states that a great deal remains to be done by the local authorities in the development of their home health and welfare services. As regards maternity, T.B., chronic-sick and infectious diseases hospitals and all mental deficiency institutions the report dismisses a suggestion that all these should be transferred at once to the local health authorities with a blunt " not favoured " ". . . Hospital services would be hopelessly disrupted." (Para. 730 (3)).

At the recent Conservative local government conference, Miss Hornsby-Smith, Parliamentary Secretary to the Ministry of Health, referred to the deadlock in the talks held between the local authorities in relation to the control of health services. This had arisen on the question whether any of the health and welfare services of the county councils should be transferred to the smaller authorities or a group of them. The implications were not made less by the fact that the smaller authorities were by no means even agreed on which services they wanted transferred to them (the Guillebaud Report recommended that county councils and county borough councils were the best authorities to administer the local authority health and welfare services, but the transfer of some services to smaller local authorities was not ruled out).

Clearly the process of devolution of powers is not going to be easy in this particular sphere.

It looks, moreover, as if the existing National Assistance system is likely to remain undisturbed and so the local authorities cannot look for a re-invigoration of function in that direction.

The question of the strict central control of local authority expenditure is another and probably the most fundamental aspect of the re-organization problem.

The dimensions of the problem are extremely large. The Minister of Housing and Local Government (Mr. Duncan Sandys) has recently said that local authorities are responsible for nearly one quarter of the capital expenditure of the nation and that the government looked to them to play their part in fighting the battle of inflation. Thereby hangs a tale!

It is, of course, a fact that the rigid control exercised by the central government over local authority finance and action has tended to cause frustration in the ranks of local committees and their officers.

This frustration has found considered expression in the conclusions of a West Midland group study which, starting in 1941 has been working under the chairmanship of Sir Raymond Priestley (then vice-chancellor of the University of Birmingham). The membership comprises a distinctive combination of academic, business and technical interests and the results of their deliberations have been embodied in a book *Local Government and Central Control* first published by Routledge and Kegan Paul earlier this year.

On this main issue the study group made certain recommendations with a view " to re-creating an interest, a greater sense of responsibility, and ultimately a greater degree of efficiency in the administration of local affairs . . ."

These include:—

1. The central government's power to require detailed proposals in advance and to veto or alter them should be eliminated wherever possible.

2. The financial accountability of local authorities to central government departments should be *post hoc* only. It should be related firmly and explicitly to compliance with standards of cost and checks on efficiency.

3. The carrying out of national policy should be by an inspection of performance rather than by the control of detail in advance.

4. Grants should be based on two factors—standards of adequacy and standards of cost to reach those standards of adequacy.

5. Exchequer equalization grant should be abolished together with all grants in compensation of previous revenues.

6. All services should be grant-aided according to a standard formula based on a system of cost-accounting and pre-determined national standards.

7. Local authorities should have freedom of spending both its own rates and central grants.

8. Local authorities should be required to publish full reports on their performance and the cost thereof related to the standards applicable.

9. There should be a uniform system of accounting for all local authorities related to detailed cost accounting.

Obviously the task of ascertaining and applying national standards of adequacy and costs is one of complexity and far from easy. At the same time the proposals set out above contain, I think, the ingredients out of which healthy organs of local government might be created.

A further major difficulty seems to me to be the fluid condition of the British economy with its frequent balance of payments and gold reserve emergencies. British finance is far more vulnerable than it used to be in the inter-war years to troubles of this kind. Experience under post-war governments shows that local government expenditure can be most effectively controlled by the central government in these contingencies under the present system. Would this be possible if the study group's ideas were implemented ? Presumably government grants could be suitably restrained at the central fountain-head. I feel that local representation can never become completely efficient so long as the government holds the reins so tightly at the centre.

The feelings of frustration engendered by the system are said to have deterred suitable candidates from entering the local government field and some say that there is a falling-off in quality of those coming forward.

The study group draw attention to the fact that candidates tend to be attracted to advisory boards and regional councils nowadays rather than to local authorities. They point out that if the careers outlined in the 1950 edition of *Who's Who* are compared with those of 1900 it will be found that the proportion

of persons who had served on government committees and boards doubled in size over the period, while the proportion of persons who had at any time served in local government declined by about one third.

Before the war many more active professional and business people became councillors than do to-day. This shrinkage is probably due to their greater preoccupation with their own professions and businesses which require more attention whilst the changed burdens of taxation reduce the number of leisured and retired people who are able to give service to their local communities.

Obviously other factors are at work as well.

Added to these influences the technicality of local government work has increased thereby tending to thrust the specialist officer into the ascendancy over the elected personnel. The local councillor of 1956 has to work hard to make his contribution well-informed and competent and to control policy.

As to the workings of " local democracy " it is axiomatic that apathy reigns at local government elections. " Write to your M.P. " is a cry which has a considerable following but never " write to your councillor." Many electors are content to carry on their personal lives and take local government services very much for granted until their pocket is affected. If the rates go up then they put out the reigning government without much ado or troubling themselves with the deeper why's or wherefors.

This problem is not, of course, peculiar to local democracy. A well-known Parliamentary and television personality complained the other day that it was very difficult to interest people in the ramifications of the Suez crises as against the attractions of Miss Marilyn Monroe and the Test matches. The Parliamentary issues are apt to be less prosaic than the local government and it is easier to focus them in the public gaze. Added to that Parliamentary elections are, on the whole, less frequent than local government.

I think, therefore, that it must be right to try and interest local electors by high-lighting the comparative performance of their council in regard both to efficiency and economy of service vis-à-vis other established standards.

If however this suggestion leads to a mass of unreliable and conflicting statistics brandished about then I fear that the electorate may be more puzzled than enlightened.

Many people (including myself) much regret the introduction of the great party machines into the local government sphere. Inevitably, though, once one major party has taken this step the others must follow in self-defence. It is now probably too much to hope for that the major national parties withdraw from the local arena and we must look for improvement in different channels.

COST CONSCIOUSNESS

It is well known that some time ago the Ministry of Health initiated investigations into a number of aspects of hospital costs: costing systems were framed or reviewed and investigators visited hospitals for on the spot examinations. The Annual Report of the Ministry for 1955 refers to costing both as to system and as to detailed investigation. It states that a working party was set up in November, 1953, to devise within the framework of a subjective accounting system a system of costing the departments and services of a hospital which would be of permanent value to hospital administration; the working party was reminded before commencing its labours of the need to limit the cost of costing. Its report was published in July, 1955, and set out a fairly comprehensive scheme of departmental and unit costing as an annual operation associated with interim cost statements prepared at the discretion of hospital authorities and purely for domestic use, on the basis of prime costs only. The Minister adopted the report, put in hand the preparatory work necessary before the new systems could be introduced, and has now issued a memorandum on hospital costing (HM(56)77) indicating that the new system, embodying the working party's recommendations, can be implemented on April 1 next.

In the meantime the present system of cost analysis based on the subjective headings of the financial accounts has continued in operation and all hospital boards and committees have been told to make the fullest use of the published figures to examine all fields of expenditure in which further economies might be effected.

The Ministry then gave information about a pilot investigation carried out during the year with the purpose of finding the reasons for the wide differences in cost under certain sub-heads of expenditure incurred by the large general teaching hospitals. The items of expenditure selected for investigation were provisions, drugs, and fuel, light and power. Some of the results of these investigations are worthy of study by local authority members and officers. In relation to food, for example, it was found that the lowest cost hospitals kept the purchase of food effectively in the hands of the catering officer who was regularly given information on the current expenditure on food in relation to the budget; they also kept the over-issue of food to a minimum by checks against the numbers to be fed which were themselves regularly checked for accuracy. There is a close parallel here with school meals where although a system of haggling about grant payable has been allowed to creep in and is an objectionable feature, it is undeniable that unit costing control over food bought has resulted in great economies through the elimination of extravagance and wasteful buying methods, while continuing to ensure the provision of a satisfactory meal.

The result of inquiries into the cost of fuel, light and power were interesting: as was obvious it was found that a great number of factors influenced individual hospital costs, for example varying local prices; floor area, cube per in-patient and the construction type and layout of buildings; the standard and scope of engineering services; and of course climate. After taking account of these and other factors there remained a difference between the highest and lowest costs of about 7*s.* per in-patient week. The investigators were able to indicate certain measures which might be taken to reduce costs, for example, use in certain cases of lower grades of fuel without loss of efficiency, replacement of expensive independent heating apparatus by central heating, effecting improvements in plant efficiency and measures to make staff economy—conscious in the use of heat, power, light and water. Incidentally, the Minister states the inquiry produced a great deal of useful information which may be valuable in the planning of new hospital buildings. Here again there is a lesson for many local authorities.

The Minister of Education, speaking at Torquay to the annual conference of the Institute of Municipal Treasurers and Accountants in June last referred at some length to costing. After praising the work of the Ministry architects and building group in achieving better and more economical designs for school building and in putting across this advice to local authorities he went on to say that the crucial point which must worry any

Minister who is interested in the finance of his service is that there is no adequate machinery, first for making proper comparisons of unit costs in the education service, secondly for analysing the reasons for the range of costs, and thirdly for spreading knowledge of the methods which some authorities are using to keep their costs down. He announced that he proposed to set up an investigating and advisory service whose job would be to establish facts, to assess reasonable costs in relation to agreed standards and to publish advice on methods which should be adopted to attain such standards. As an example of what had been done already he quoted the bulletin on fuel consumption (Building Bulletin No. 13), mentioning incidentally that architects had told him that if rises in cost per place of new schools are to be minimized there is no more fruitful field to look than the heating installations. Sir David Eccles concluded this part of his address by saying that he knew how difficult it was for individual authorities to solve for themselves how to get costs down and the best way to help is by pooling experience over a wide front.

Twenty years ago the conference of the same Institute was held in Blackpool and was addressed by Councillor Joseph Monkhouse, F.C.W.A., on the co-ordination and measurement of municipal costs. He advocated the introduction of standard costs and a national co-ordinating committee, all with the idea of improving performance and cutting out waste. His ideas got a mixed reception, many speakers including one who spoke from the council platform being concerned chiefly to list snags and difficulties and to create the impression that the suggestions made were largely impractical. Small wonder that Dr. A. H. Marshall, Coventry city treasurer, who wrote in the same year a treatise on " Internal Financial Control " referred in his book to costing as " a valuable device as yet undeveloped in local government." His inquiries revealed that even when excellent cost figures were prepared they were not made the basis of administrative action: in only a handful of instances did authorities take the cost returns seriously.

It is unfortunate that progress has been so slow. After considering Mr. Monkhouse's proposals for a lengthy period the Council of the Institute of Municipal Treasurers arrived at the conclusion that as a first step members should be advised to adopt the classification of expenditure adopted in the standard form of Abstract of Accounts of that day. Well, the present Council have devised and recently published a new standard system of classification: let us hope that it will be received favourably and adopted more widely than previous efforts of the same sort. The County Treasurers' Society pioneered many statements of comparative costs and these, now linked with the county borough figures prepared by the Institute, are a valuable starting point, if they are used as intended.

In too many authorities, however, departmental heads resemble closely a group of mediaeval condottieri, all nominally engaged to serve one employer but each really concerned first and last to maintain intact the status and position of his own mercenaries and prepared to act for the good of all only if the immediate interests of his own band are not thereby imperilled. In these semi-anarchistic conditions it is not surprising but nevertheless sad that the really effective action towards economical administration has more often than not had to come from outside local government—from ministers of the crown and their departments, and even from organizations and method advisers, all doing a job which local government, if it had a mind, could do equally well itself.

WEEKLY NOTES OF CASES

CHANCERY DIVISION

(Before Roxburgh, J.)

RE T. AND T. (INFANTS)

October 10, 11, 12, 1956

Infants—Custody—Application by putative father—Jurisdiction of justices to entertain—Guardianship of Infants Act, 1886 (49 & 50 *Vict., c.* 27), *s.* 5—*Guardianship of Infants Act*, 1925 (15 & 16 *Geo.* 5, *c.* 45), *s.* 3—*Administration of Justice Act*, 1928 (18 & 19 *Geo.* 5, *c.* 26), *s.* 16.

APPEAL under Guardianship of Infants Acts, 1886 and 1925.

The appellant, the putative father of two illegitimate children, took out two summonses under the Guardianship of Infants Acts, 1886 and 1925, for the custody of the children. The justices rejected a submission that they had no jurisdiction under the Acts to entertain the application, but they decided against the appellant on the merits of the case. The appellant was admittedly the natural father of the children and the respondent was the mother. On an appeal by the father to the Chancery Division the respondent took the preliminary objection that there was no jurisdiction in the justices or in the High Court on appeal to entertain an application under the Acts for custody by a putative father.

Held: there was no compelling reason for extending the term " father " in the Acts from its *prima facie* meaning of *de jure* father to putative father; " father " in s. 16 of the Administration of Justice Act, 1928 (which allowed a father to make an application for custody under s. 5 of the Act of 1886) meant legitimate father; and, therefore there was no jurisdiction under the Acts of 1886 and 1925 either in justices or in the High Court to entertain an application for custody by a putative father.

Counsel: *Clapham* for the putative father; *Comyn* for the mother.

Solicitors: *Shaen Roscoe and Co.*, for *John Copland & Son*, Sheerness; *Harold Kenwright & Cox.*

(Reported by R. D. H. Osborne, Esq., Barrister-at-Law.)

PERSONALIA

APPOINTMENTS

Mr. J. F. Pearson, assistant solicitor in the town clerk's department of Harrogate, Yorks., borough council, has been appointed clerk to Crook and Willington, Co. Durham, urban district council in succession to the late Mr. W. G. Omand. Mr. Pearson, who commenced his career in private practice at Truro, Cornwall, Tunbridge Wells, Kent, and Kendal, Westmorland, was formerly assistant solicitor with Weston-super-Mare, Somt., corporation and immediately prior to his present appointment, served in the Colonial legal service as lands officer to the Nyasaland Government.

Mr. Dennis Parker Harrison, LL.B., (Lond.) (Hons.), has been appointed clerk to Calne and Chippenham, Wilts., rural district council. He will commence duty on April 1, 1957. At present Mr. Harrison holds the appointment of deputy town clerk and deputy clerk of the peace to the borough of Maidstone, Kent. He has held previous appointments with the borough of Weymouth and Melcombe Regis, Dorset, Enfield, Middx., urban district council and Welton and North Kesteven, Lincs., rural district councils. Mr. Harrison's appointment at Chippenham arises from the retirement of Mr. S. E. Holton, which takes effect from March 31, 1957, after 27 years' service with the authority. In August last he completed 40 years local government service, having previously served Frome, Chard and Yeovil, Somt., rural district councils.

Mr. John Inch has been appointed deputy clerk to Aldridge, Staffs., urban district council. Mr. Inch was articled to the former town clerk of South Shields, Mr. Harold Ayrey, and finished his articles with Mr. R. S. Young, the present town clerk. Mr. Inch qualified at the June final, 1955 and was admitted on November 1, 1955. He was appointed immediately as second assistant solicitor to South Shields county borough and has served in that capacity ever since. Mr. Inch commenced his new duties on October 29, last. Prior to commencing articles, he obtained the diploma in public administration at Durham University (1949).

Mr. D. J. Freeman, chief clerk in the town clerk's department at Warwick, is being recommended for appointment as deputy town clerk. He began in the office as a junior clerk on leaving Warwick school and on a number of occasions has deputized for the town clerk during periods of illness.

Mr. R. N. L. Hamm, temporary assistant solicitor to Sunderland county borough council, has been appointed assistant solicitor to Derby county borough council, as from December 1, next. Mr. Hamm was appointed to his present position in February, 1954. Mr. Hamm was educated at Sedbergh School and Queen's College

Cambridge, where he gained his B.A. (Law) and M.A. He was called to the bar by Lincoln's Inn in February, 1954.

Mr. Clifford Yendole, senior conveyancing and legal clerk to Wiltshire county council since November, 1949, has been appointed a senior law clerk in the town clerk's department of Wolverhampton county borough council.

Mr. R. T. Wright, clerk to Nairobi, Kenya, county council, has now been appointed secretary of the Association of County and District Councils of Kenya. Mr. Wright is also clerk of the Thika and Nairobi urban district councils, the Nairobi Eastern and Nairobi Western rural district councils, and secretary of the Athi River and Tana River regional water boards. He was admitted in 1950, having been articled to Mr. R. Edgar Perrins, town clerk of Southport, Lancs., with whose council he first served as assistant solicitor, leaving in 1951 to become assistant solicitor to the city council of Nairobi. Mr. Wright formed the County and District Councils of Nairobi in 1953. From 1931 until admission Mr. Wright was employed in the town clerk's department of Southport county borough council.

Mr. Denis Hicks Robson, Q.C., recorder of Middlesbrough since 1953, has been appointed temporary recorder of Newcastle. The previous Newcastle recorder, Sir Godfrey Russell Vick, Q.C., has become a county court judge for the Bedfordshire district.

Chief Inspector John H. Hamer, who has been stationed at Taunton for the past seven years, has been promoted superintendent to take charge of the Taunton division of Somerset constabulary from October 28 last. He replaces Superintendent H. K. James, who has been appointed the new police superintendent at Weston-super-Mare, to fill the vacancy caused by the death of Mr. H. J. Baker. After seven years' service with the Grenadier Guards, Mr. Hamer joined the force in 1934. During the Second World War he rejoined the Army and became a Captain in the Argyle and Sutherland Highlanders. At the end of hostilities Mr. Hamer was in charge of the police at Spandau. A year after his return to Taunton he was promoted sergeant in 1947, and was posted to Keynsham, where he remained until July, 1949. He was promoted inspector, transferred to Taunton, and became a training officer. In February, 1954, Mr. Hamer was promoted chief inspector.

Miss Jean Lyon Stewart, chief inspector of the women's section of Lancashire county police, has been promoted to superintendent. She is the first woman to hold the post in the Lancashire force. Miss Stewart joined the Manchester city police in 1938 and has served on the Hull and Salford forces.

Mr. J. A. Bray has been appointed a probation officer for the county of Durham and assigned to the Chester-le-Street petty sessional division area from November 5, 1956. Mr. Bray is 23 years of age, was educated at Wellingborough School and Hull University and was a Home Office student probation officer.

Miss H. F. Kemp has been appointed a probation officer for the county of Durham and assigned to West Hartlepool county borough and Hartlepool and Castle Eden petty sessional division areas, from November 19, 1956, in place of Mrs. M. Blackett who is retiring on reaching the age limit. Miss Kemp is 23 years of age. She has just completed a University course having obtained the degree of LL.B. and a diploma in social administration at the University of Manchester. Mrs. Blackett, whom she is replacing, has been with the probation service since February, 1944 and previous to this had 12 years service as a matron of a children's home.

Miss Eileen Potter has been appointed second assistant to Miss Joan Adair, B.A., clerk to Mortlake, Surrey, petty sessional division justices, as from December 1, next. Miss Potter has been for the past eight years an assistant at Brentford magistrates' court. The previous occupants of the former position were Mr. Raymond Greenaway, who had to resign owing to ill health, and Mr. G. W. Mansbridge, who has resigned for personal reasons.

Mr. Christopher Winyard has been appointed a full-time probation officer for the city of Leeds. He will commence his duties there on November 19, next. Mr. Winyard has served for the past four years as a probation officer at Newcastle, Staffs. He is now 30 years of age.

Mr. John Robert Culshaw has been appointed a whole time probation officer to serve the county of Dorset. He is 43 years of age. Mr. Culshaw is at present serving as a probation officer for the Beacontree petty sessional division, Stratford, E.15. Mr. Culshaw will take up his duties in Dorset on January 1, 1957 and act for the borough of Poole. His office will be at Seacombe, Park Road, Poole, Dorset.

RETIREMENTS

Mr. E. F. Cull, M.B.E., clerk to Hatfield, Herts., rural district council for the last 26 years, retired on October 31, last.

Alderman Walter Cradoc Davies has retired as registrar of the county courts of Pwllheli, Portmadoc and Blaenau Ffestiniog after 17 years. His successor is Mr. Gwilym Llewellyn, who becomes registrar for Caernarvonshire and Anglesey and also Llanrwst and Blaenau Ffestiniog. Alderman Davies is 77 years of age. He was admitted in November, 1904 and was town clerk of Pwllheli for 29 years.

OBITUARY

Mr. Leslie Marks, a metropolitan magistrate since 1947, has died at the age of 66. He sat at Old Street Court.

Mr. John Joseph Lambert, assistant clerk to Horncastle, Lincs., rural district council, has died at the age of 68. During the war, Mr. Lambert carried out the duties of rating officer in the Horncastle area. He leaves a widow and a daughter.

Mr. Edward Hall Swindale, treasurer of the borough of Gateshead, has died. He was 52 years of age. Mr. Swindale started his career with Newcastle corporation and was appointed chief accountant to Gateshead corporation in 1935. In 1946 he became borough treasurer.

Mr. Lionel Hastings Vulliamy, former coroner for a northern district of East Suffolk, has died at the age of 81. Mr. Vulliamy was first appointed coroner in succession to his father (Mr. Alfred Fred Vulliamy, who had held the post for 38 years) in 1915. On his retirement in 1948 his son, Mr. David M. Vulliamy, succeeded him, and is the present coroner for the district. Until his retirement about three years ago, Mr. Vulliamy was senior partner in the firm of Messrs. Steward, Vulliamy and Aldous, solicitors, of Ipswich. He continued to take an active interest in the business until the time of his death.

Mr. Reuben Salter, J.P., a former alderman and mayor and an Honorary Freeman of the borough of Boston, Lincs., died on September 1, last, aged 91. Mr. Salter served as a member of the council from 1921 until his retirement in 1954.

NOTICES

The next court of quarter sessions for the borough of Guildford, Surrey, will be the adjourned sessions commencing at 10.30 a.m. at the Guildhall, Guildford on Monday, November 12, 1956.

The next court of quarter sessions for the borough of Southend-on-Sea, Essex, will be held on Monday, November 12, 1956.

MISCELLANEOUS INFORMATION

COSTS OF LEGAL REPRESENTATION FOR PROBATION OFFICERS AND OF WITNESSES

In Home Office Circular No. 151 dated October 10 the Secretary of State gives general approval, under r. 78 (5) of the Probation Rules, 1949 (as amended by the Probation Rules, 1951) to probation committees incurring necessary expenditure as follows:—

1. Where the case is not one to which the Costs in Criminal Cases Act, 1952, applies, reimbursement, at rates not exceeding the limits prescribed by the Witnesses Allowances Regulations, 1948 and 1954, of the expenses of witnesses giving evidence in support of a probation officer in proceedings under s. 6 of the Criminal Justice Act, 1948, or under s. 66 (1) of the Children and Young Persons Act, 1933.
2. Legal representation for a probation officer at a court of Assize or quarter sessions in proceedings:—
   (*a*) under s. 6 or s. 8 of the Criminal Justice Act, 1948, and
   (*b*) on appeal against a decision made by a court under s. 66 (1) of the Children and Young Persons Act, 1933.

ROAD CASUALTIES—JULY AND AUGUST, 1956

During August, 562 people died and 6,444 were seriously injured in accidents on the roads. In addition 21,510 received slight injuries.

These figures are provisional and subject to minor adjustments. Compared with those for August, 1955, there were 63 more deaths —about two more every day—and 220 more cases of serious injury. The total of 28,516 was up by 1,301.

The increases in England and Wales were particularly marked in counties where there are holiday resorts and in country areas. There were decreases in some of the main industrial areas.

A final count of July casualties shows that 455 people were killed, 5,870 seriously injured and 19,770 slightly injured. The total of 26,095 is 1,213 less than in July, 1955. In spite of the general improvement, casualties to drivers and passengers of vehicles other than motor cycles increased by 1,142 to 8,828. The increase occurred in both built-up and non-built up areas. Casualties to pedal cyclists fell by 918 to 5,229, and those to motor cyclists and passengers by 1,035 to 6,931.

These figures suggest that while bad weather kept many pedal and motor cyclists off the road other motor traffic was heavier than a year ago.

The provisional total for all road casualties in Great Britain in the eight months January to August was 177,587. This was 8,011 more than in the same period last year. Deaths numbered 3,465, an increase of 213.

REPORT ON WAR PENSIONS

The report made jointly by the Minister of Pensions and National Insurance; the Minister of Health and the Secretary of State for Scotland on war pensioners for the year 1955 is the third report since the amalgamation of the Ministry of Pensions and the Ministry of National Insurance and the transfer of certain medical functions to the Health Departments. At the end of the year 870,000 war pensions were being paid, of which about 385,000 were for the 1914 war and 487,000 for the 1939 war. The report gives an account of the effect of the increased rates and allowances which came into operation in February, 1955.

About 46,000 war pensioners sought the help of welfare officers in the Ministry's offices and in addition help or advice was given to more than 8,000 patients in war pensioners' hospitals. The proportion of home interviews' tends to grow and the number of pensioners seen at the offices and at home are now about equal. The increased demand for man-power brought employment to many pensioners who had previously found difficulty in getting suitable work and the number of registered disabled persons who were unemployed was the lowest since the end of the war.

War pensions totalling nearly 30,000 are paid to pensioners who are living outside the United Kingdom. The Ministry of Pensions and National Insurance acts through its own representatives in North America, in co-operation with the welfare departments of the Canadian and United States governments. Elsewhere the Ministry acts through an appropriate department of the government concerned or through British consuls.

Housing problems were fewer in 1955 but still often difficult to resolve. In many instances those suffering from tuberculosis or who needed ground floor or specially adapted accommodation were rehoused by local authorities. Ex-service and other voluntary organizations sometimes provided grants or loans towards house purchase. Calls by welfare officers on voluntary funds were fewer than in 1954. In many cases the aid given enabled pensioners to solve their difficulties themselves or effected their re-settlement.

Through the visits which are made by members of war pensions committees and welfare officers over 20 *per cent.* of severely disabled pensioners are now being helped in one way or another. Help is also given in arranging holidays.

It is emphasized that the welfare of ageing pensioners, mainly those of the first world war, is becoming increasingly important. Welfare officers do all they can through local social services to help these pensioners to stay in their own homes as long as possible and to bring them the friendship and companionship they need. During the year special attention was paid to the needs of elderly war widows of whom about 48,000 are over 70 years of age. An experiment in Wales during 1954 showed that about one third of these widows would welcome friendly visits from voluntary helpers and towards the end of 1955 these visits were extended to the whole of the United Kingdom. It is intended to get in touch with all widows when they reach the age of 70 and to arrange regular visits for those who desire it.

During the year the number of war orphans under the care and supervision of the Minister fell to just under 5,000. The children's officers of the Ministry continued to make regular visits to the home after a child has started work and it is a tribute to their work that when those who have been helped as war orphans settle down in adult life, many of them keep in touch with the children's officers.

The section of the report dealing with medical and surgical treatment for war pensioners shows that the reduced demand for in-patient treatment in war pensioners hospitals has made it possible to extend the arrangements for allowing accommodation to be used for other patients. During the year certain war pensioner units were transferred to the administration of the appropriate hospital management committees.

ESSEX WEIGHTS AND MEASURES DEPARTMENT

Solid fuel remains one of the chief subjects dealt with in the reports of weights and measures departments. High prices present a temptation to persons inclined to dishonesty, and inspectors have to be constantly vigilant.

Mr. F. W. Horsnell, chief inspector to the Essex county council, in his report for the year ended April 30, records an improvement. During the year 7,819 sacks were weighed and of these 626 were deficient of the represented weight which is equivalent to eight *per cent.* This compares favourably with 12½ *per cent.* of the previous year. Mr. Horsnell suggests that the position will never be entirely satisfactory until fuel is delivered in sealed non-returnable sacks. The sale of wood fuel is controlled in Essex and, according to this report, the unscrupulous type of itinerant trader found in Essex in previous years has taken his trade to areas where there is no control on the sale of wood fuel. This points to the desirability of national legislation.

It is pointed out that one result of the development of complicated price and weight recording machines is that the time taken to examine and test this modern equipment is far greater than that required in respect of the straight-forward weighing and measuring appliances in use in the past. The high output of these machines coupled with the increased prices of commodities calls for a closer degree of accuracy and more frequent inspections. This would seem to demand an increase of staff, but this is not easy to obtain. Mr. Horsnell says: "There has been no increase in the establishment during the year. Recruitment of staff continues to be a matter for evergrowing anxiety and there are indications that the type of youth who, in the past was attracted to this branch of local government, is now showing a marked preference for commercial undertakings."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, October 30

OCCUPIERS' LIABILITY BILL—read 3a.

MUSIC OF THE MASTERS

We have it on the authority of John Milton that—

"Such sweet compulsion doth in music lie."

Milton, however, was a Puritan, and can scarcely have envisaged the application of his words to certain events in south-east London, which have recently had their sequel in the Lambeth county court. The plaintiff, Mr. Ernest Stockman, is a sand-blaster—that is to say, he directs the jets of sand which prepare glass surfaces for figure and pattern-engraving. He is a man of many parts, for in his spare time he makes figures and patterns of another kind—in sound. He is a proficient pianist and, as such, is greatly in demand as an entertainer.

The forensic *concerto* in which he has figured as soloist opened in December, 1955. The introductory passage, remarkable for its harmonics, took the form of a duet between himself and the defendant, Mrs. Annie Masters. The latter, in a gentle *cantabile*, invited the plaintiff to her Christmas party, expressing the hope that he would play for her and his fellow-guests. The plaintiff, in a cheerful *allegro assai*, accepted the invitation, and inquired what sort of instrument she had. The hostess said she thought of hiring a piano for the evening, whereupon Mr. Stockman (*vivace ma non troppo*) offered to bring his own.

These preliminaries once over, the First Movement proper commenced. The solo instrument made its entry, *andante con moto*, on the pantechnicon. Coming to a pause at the end of the bar, the soloist announced the principal subject—a flowing, limpid theme with several variations. In a vigorous *tutti* the development took its normal course, and the customary re-capitulation brought the Movement to a boisterous close. (It was a very jolly party.)

The Second Movement began, harmoniously enough, with brief reminiscences of the foregoing subjects. It was not until the soloist began to develop a new theme—the removal of the instrument from his hostess's house—that dissonance began to appear. The same theme, given out persistently in the bass, was interrupted by the defendant's loud treble chords; discussion of the subject, at first conducted in fugal form, rose gradually from *ppp* to *fff*, and concluded with the defendant in the dominant, announcing, *sforzando*, that she would chop the instrument up rather than allow him to take it away. Concord gave way to discord, and this section came to a turbulent and chaotic conclusion.

The Third Movement was heard in the Lambeth county court. The plaintiff's evidence, delivered *legato* from the witness-box, restated the earlier subjects. The defendant, in a sharp *staccato*, treated the themes in inversion, alleging that he had sold her the piano, the night before the party, for the sum of £12. The soloist, now reinforced by a supporting instrument, brought out a clearly marked note—a receipt for the £111 he had paid for the piano two years before. This took the subject back into the tonic major; and the learned Judge, in a vigorous and forceful *coda*, brought the score to a perfect cadence with an order for immediate restitution.

Thus ended this unusual composition, with hostess and guest playing their parts in contrary motion. Apart from its musical interest, the whole episode gives rise to some interesting reflections on the laws of hospitality. Primitive man treated as sacred the person of a stranger at his hearth, though whether the guest's goods and chattels were equally sacrosanct is not so clear. And there are recorded, in history and legend, distressing derelictions from the duty owed by a host to his guest, and *vice versa*. Sometimes the one, sometimes the other, has fallen short of the proper standard of urbanity. The most notorious case in musical history is that of the statue in *Don Giovanni*; invited to a quiet supper, he seized his host and dragged him down to hell. The Cyclops Polyphemus behaved equally badly, in cooking and devouring the companions of Odysseus, who had taken refuge in his cave; the robber Procrustes went to extreme lengths (in more senses than one) when he offered his guests a bed for the night, and either stretched out or lopped off short the limbs of those who did not quite fit. But perhaps the most apposite parallel to the case we have been considering is that of Orpheus. Presented with the lyre by Apollo, and instructed by the Muses in its use, he enjoyed all the advantages of a first-class musical education; by the strains of his instrument he enchanted not only the wild beasts, but also the trees and rocks upon Olympus, so that they moved, like a piano on casters, to follow the sound. After the death of his wife Eurydice he unwisely accepted an invitation to visit the women of Thrace. They, apparently, were a tough lot; in the excitement of a Bacchanalian orgy they tore him to pieces. Itinerant musicians, who go out "to oblige," will draw the appropriate moral.

A.L.P.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

INDICTABLE OFFENCES

At question time in the Commons, Mr. C. Royle (Salford W) asked the Secretary of State for the Home Department if he would introduce legislation to enable magistrates' courts to try cases of minor house-breaking.

The Under-Secretary of State for the Home Department, Mr. W. F. Deedes, replied that the present list of indictable offences triable summarily was based on the recommendations of a Departmental Committee, and before any alteration was made it would be desirable to have a similar review of the whole question: house-breaking might not be the only candidate for inclusion in the list. The Secretary of State was afraid, however, that he could not undertake to initiate such a review at present.

Mr. Royle: "Would not the hon. Gentleman agree that such a proposal would save the rigmarole of depositions in cases of this kind? Is it not a fact that magistrates' courts try very many cases which are more serious than the ones which I have in mind?"

Mr. Deedes: "I think the hon. Member must be aware that this would be a very controversial change and might have the effect of being taken to indicate that house-breaking offences were no longer so seriously regarded by the community, and that would not be wise at the moment, when the number of such cases is increasing."

MOTORING OFFENCES

Mr. Royle asked if the Secretary of State would cause an inquiry to be made into differing penalties imposed by various benches of magistrates in road traffic offences.

Replying in the negative, Mr. Deedes said that the Secretary of State did not think that any useful purpose would be served by such an inquiry, which would involve the expenditure of an inordinate amount of time and money.

Mr. Royle: "Does the hon. Gentleman think, in view of the very wide differences in the penalties being imposed in different parts of the country, that, all other things being equal, it merits some broad hint from the Home Department?"

Mr. Deedes: "It is not in dispute that penalties do vary, and vary widely, but I would point out that the Home Office circular on the new Road Traffic Act drew magistrates' attention to the Lord Chancellor's suggestion that they might be well advised to review the scale of penalties which they impose in motoring cases."

ERRATUM

We regret that a misprint occurred in our answer to P.P. No. 10 at p. 684 *ante*. The word "cannot," in the third paragraph of our answer, was printed in error for "can." There is, of course, no doubt that such convictions can be taken into account.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Burial Ground—*Scattering of ashes—Fees.*

The X burial joint committee, appointed by the Y urban district council and the Z parish council, act as the burial authority for the two parishes, and as such authority, have a table of fees, payments, and sums fixed and settled under s. 34 of the Burial Act, 1852. In addition to such tables of fees, the burial committee have recently decided to charge a fee of 10*s.* in cases where the ashes of a deceased person are scattered on the grave of a relative of such deceased person. Recently an inquiry was received by the clerk of the burial committee from a resident who wished to inter the ashes of a relative in the grave of another relative. These ashes were being sent to England from abroad. The inquirer was informed that he would have to call at the clerk's office, fill up the necessary notice of interment, and pay such fees as were payable. In the case of the interment of a casket containing ashes this fee would be the normal interment fee, *plus* grave digging charges. Nothing further was heard on the matter until recently when it was brought to the notice of the clerk of the burial authority that a piece of turf had been lifted from the grave in which it was originally stated it was desired to inter the ashes, some ashes scattered, and the turf replaced. All the evidence collected points to the fact that the ashes were scattered by the person who first made the inquiry, although he has made no formal application, paid no fees, nor replied to an inquiry made. No reference can be found dealing with such a case, and the committee would welcome advice as to what steps, if any, they can take in the matter. ENHED.

Answer.

An authority set up under the Burial Acts, being a statutory body, can not impose charges for the use of the burial ground other than those authorized by statute. In those Acts the word "interment" is sometimes used in conjunction with the word "body," and sometimes alone; although s. 34 of the Act of 1852 does not speak of "interment of a body," the whole context shows, in our opinion, that this is what the section meant when speaking of a fee for interment. Ashes produced by cremation are not a body: *Re Kerr* [1894] P. 284, and the burial authority's demand in this case of "the normal interment fee" for burial of a casket containing ashes was therefore, in our opinion, misconceived and unenforceable.

So is the fee of 10*s.* which, over and above the fees fixed under the Act and approved by the Minister, is stated to be charged for scattering ashes. Scattering is outside the Acts altogether. It need not be allowed at all, but if it is allowed no charge can lawfully be imposed. This view of the law is supported by *Re Kerr, supra*, and the Chancellor's judgment in *Re Haigh with Aspull New Parish* [1919] P. 143.

In the case before us, we gather that after the abortive correspondence about burying the casket the casket was not placed in the ground but unboxed ashes were so placed. We are not told whether the person believed to have done this has any rights in the grave where it was done; even assuming him to have the largest right which could be granted (*i.e.*, an exclusive right of burial in perpetuity) this does not entitle him to use the grave space for ashes: *cp. Hoskyns Abrahall* v. *Paignton U.D.C.* (1929) 93 J.P. 93. In other words, his action was a trespass which (if his intention had been known in advance) could have been the subject of an application for injunction, although the court might well have refused to interfere. It might presumably be the subject now of an action for damages for the technical trespass, but damages could not be more than nominal, upon the facts before us, especially seeing that the illegal action followed an illegal demand of money by the committee. We should not advise proceedings.

At the end of the query we are asked "what steps, if any, the committee can take in the matter." If this means "by way of obtaining a fee," the answer is (in our opinion) no steps. If a casket had been buried, we suppose they could have dug it up, though we see nothing gained by doing so. If ashes alone have been put into the ground, the committee can do nothing.

2.—Children and Young Persons—*Probation order—Limit of compensation in case of a child—Magistrates' Courts Act*, 1952, *ss.* 32 *and* 126 (1).

In December, 1955, in a juvenile court in the county of X, a boy of 12 was found guilty of wilful damage under s. 14 of the Criminal Justice Administration Act, 1914, and was placed on probation for two years, and his mother was ordered to pay £8 for compensation and 16*s.* 6*d.* for costs by weekly instalments. The mother did not pay, and moved into another county and is now resident in the petty sessional division of Y.

A transfer of fine order was made to Y, and the mother having been summoned to appear for examination as to means before the adult court for the petty sessional division of Y, the justices heard her on the question of means. The justices at Y were disposed to deal with the matter under s. 110 of the Magistrates' Courts Act, 1952, and to order her to be detained for one hour within the precincts of the court house with a view to disposing of the matter finally, but it appeared to their clerk doubtful whether, having regard to ss. 32 and 126 of the Magistrates' Courts Act, 1952, the order for payment of the £8 16*s.* 6*d.* by the mother was valid (*see* 118 J.P.N. 506). The matter was therefore adjourned for consideration.

(1) Was the order of the court at X (as to compensation and costs) valid, and if not, what is the correct course for the justices at Y to adopt ?

(2) If it was valid, can the justices at Y properly dispose of the matter finally under s. 110, and in that event (if the order has to be in writing), do you know of any precedent for such order ? (Rule 27 of Magistrates' Courts Rules, 1952, refers to "police station" but not to "precincts of court house" The note to s. 110 in *Stone* seems too wide). IMFOR.

Answer.

1. This is a controversial point on which opinions differ and only a High Court decision could settle the matter. We published contributed articles putting the two points of view at 118 J.P.N. 679; 119 J.P.N. 174 and 584. On the whole, we now incline to the view that the 40*s.* limit fixed by s. 32, Magistrates' Courts Act, 1952, applies in all cases, including that of a probation order with an order for payment of damages or compensation.

We think, therefore, that the order of the court at X was not a valid order, and, if the justices at Y take that view, we think that they should decline to enforce payment under the transfer of fine order on the ground that they are being asked to enforce an order which, in their view, is bad on the face of it. As a matter of courtesy we think that they should inform the court at X of their decision.

2. If the order is a valid one the procedure for enforcement is, by s. 55, Children and Young Persons Act, 1933, to be as if the parent had been convicted of the offence with which the child was charged. The answer is, therefore, yes, and the order is not in writing.

3.—Criminal Law—*Larceny Act*, 1916, *s.* 1 (1)—"*At the time of such taking.*"

I should be grateful for your opinion as to what offences, if any, have been committed in the following circumstances.

(*a*) A goes to a swimming pool and when leaving accidentally and unknown to him picks up with his clothes a pair of swimming shorts belonging to someone else. He discovers these for the first time when he arrives home, and then decides to keep them for himself. Can the taking be said to have occurred when he first found the swimming shorts at his home, so that he is guilty of larceny ? Is he guilty of larceny by finding ? If not guilty of larceny, is he guilty of any offence ?

(*b*) B, having missed his last bus home, decides to borrow a bicycle which he finds at the roadside merely for the purpose of getting home. His original intention is to leave the cycle at the side of the road at a spot not far from his home. On the way home, however, he thinks that the cycle is a very good one and later decides to keep it. If the justices accept his story that when he first took the cycle he did not intend to keep it, is he guilty of any offence ? If not it seems that there is a very serious loophole in the law. GOREY.

Answer.

(*a*) A is guilty of larceny because he "takes" the shorts at the time he finds them: *see* s. 1 (2) (i) (*d*) of the Larceny Act, 1916. He could not have believed that it was impossible to take reasonable steps to find the owner.

(*b*) B is guilty of larceny. These are almost exactly the same facts as in *Ruse* v. *Read* [1949] 1 All E.R. 398.

4.—Dogs Act, 1871, s. 2—*Penalty for failure to comply with order—Enforcement.*

Section 2 of the Dogs Act, 1871 under which an order can be made on complaint that a dog is dangerous and not kept under proper control also states that "any person failing to comply is liable to a penalty of not exceeding 20*s.* a day for every day's default."

What in your opinion is the method of enforcing this penalty?

Is it enforceable:—

1. As a civil debt under s. 50 of the Magistrates' Courts Act: or
2. As a conviction under s. 70 of the Magistrates' Courts Act.

Please quote the authority for your opinion. VICTOR.

Answer.

As the word " penalty " is used in s. 2 of the Dogs Act, 1871, we are of the opinion that amounts adjudged to be paid for failure to comply with orders under that section come under the exception in s. 50 (2) (*b*) of the Magistrates' Courts Act, 1952, and are not enforceable under that section, but under s. 64 of the last mentioned Act. We are supported in this opinion by the case of *Rhodes* v. *Heritage* [1951] 1 All E.R. 904; 115 J.P. 303 in which it was held that the only penalty which the justices could impose (on an information for failing to comply with such an order) was a fine not exceeding 20*s*. a day for every day's default.

5.—Evidence—*Statement by secretary or responsible officer of a company to a police officer—Admissibility.*

In circumstances where a limited company are summoned for an offence, and the secretary or other responsible person is interviewed by a police officer:

(*a*) Can the explanation as given by such person be quoted by the police officer in evidence to the court, or

(*b*) Should the person who gave the explanation be summoned to give evidence against his firm? MINCON.

Answer.

The general rule as stated in *Halsbury*, 3rd edn., pp. 224–225 is that the principal is bound by his agent's statements if, at the time they are made, the agent is acting on his principals' behalf in the transaction to which the admissions refer and makes them in the ordinary course of his duty as such agent.

A limited company can act and speak only through its servants and if a responsible officer of a company makes a statement which relates to matters which are his concern by virtue of his position in the company or of his particular duties, what he says can be given in evidence without his being summoned to give evidence as a witness.

6.—Food and Drugs—*Milk and Dairies Regulations*, 1949—*Food and Drugs Act*, 1955, *s.* 190 (2).

A complaint has been received concerning a bottle of pasteurized milk as delivered in A county borough by X dairy company. After the bottle was emptied a sediment, probably of cement, was clearly discerned in the inside bottom of the bottle. X dairy company receives all its pasteurized milk in bottles direct from Y dairy company situate in B county borough.

The council of A county borough has laid an information and a summons has been issued by the magistrates' court of B county borough against Y dairy company alleging a contravention of reg. 26. At the initial hearing the court queried the validity of the information as laid by A county borough within the area of B county borough having regard to the contents of reg. 3 of the 1949 Regulations, namely: " it shall be the duty of every local authority *within their area* to carry into execution and enforce the provisions . . . "

The solicitor for the prosecution cited, in reply, the provisions of s. 65 (3) of the Food and Drugs Act, 1938, as re-enacted in s. 109 (2) of the consolidating statute of 1955. Emphasis was placed on the following extract from this section, namely: " a local authority may institute proceedings under any . . . regulation made under this Act notwithstanding that they are not the authority charged with the execution and enforcement thereof . . . " The solicitor for the defence reluctantly agreed that s. 109 of the Act of 1955 appeared to provide an answer to the query as raised by the court and stated that he did not desire to adopt the point on behalf of his clients. The matter was adjourned for further argument to be presented by the defence.

Your opinion is requested concerning the respective merits of the query as raised by the court and the reply as propounded by the prosecution. It will be appreciated that having regard to the expression " immediately before use " as contained in reg. 26 (1) it was considered that B county borough was the proper venue for the hearing of this matter. H. CAPEL.

Answer.

We respectfully agree with the prosecution's contention. This situation seems to be the one specifically provided for by s. 109 (2).

7.—Highways—*Dedication—Footpaths between houses.*

I refer to s. 23 of the Highway Act, 1835; ss. 47 and 49 of the National Parks and Access to the Countryside Act, 1949, and the recent case of *Richmond (Surrey) Corporation* v. *Robinson* (1955) 119 J.P. 168.

Am I right in thinking that the effect of the above mentioned authorities is that footpaths on council house estates in rural districts in existence before December 16, 1949, are repairable by the inhabitants at large, notwithstanding that at the time they were laid out the highway authority declined to take them over? The footpaths referred to are not those alongside carriage ways, but are those which run between houses and connect the roads on the estate for the convenience of those living there. PIDGOR.

Answer.

Yes, in our opinion, provided they have been accepted by the public as well as dedicated and are not used merely by the tenants in the streets which they connect.

8.—Housing Act, 1952—*Sale of house—Indemnity against road charges.*

We are acting for a rural district council who have agreed to sell a council house to the tenant in pursuance of ss. 3 and 4 of the Housing Act, 1952. The house is one of a row of such houses completed in 1937 and fronting a made up country lane. The council acquired further land at the side and at the rear of the house in 1946, and between 1949 and 1955 erected 16 further council houses on the land so acquired. To give access to the new housing site a road, which has not been made up, was laid at right angles to join the country lane along the 100 *ft*. side of the garden of the council house now to be sold. There is at present no access from the garden of the council house to the unmade new road, but such access may be required in the future. The price fixed by the rural district council for the purchase of the council house in pursuance of ss. 3 and 4 of the Housing Act, 1952, is 25 times the net annual value, and this price does not include anything in respect of the cost of making up and paving the new road. The new road is primarily for the use of the new council houses and the rural district council would, if there is any proper authority, be prepared to undertake the whole of the cost of making up and paving that part of the new road abutting the 100 *ft*. garden side of the council house to be purchased, and to enter into a covenant in the conveyance of the house indemnifying the purchaser tenant against all liability in respect of such road charges.

Your advice on the following points would be appreciated:—

(*a*) Have the council any power or authority to indemnify the purchaser tenant against charges which will be incurred in making up the new roadway and to pay the whole cost itself, and, if so, what resolution or other formalities are requisite ;

(*b*) If at some future time the purchaser tenant wishes to have access to the new road, can any proportionate payment in respect of the road charges then be imposed as a condition of his being allowed such access.

(*c*) Please advise generally. P.A.R.D.C.

Answer.

(*a*) Yes, in our opinion, with the consent of the Minister. A resolution embodying the terms could then be passed and the indemnity given with the conveyance.

(*b*) No, in our opinion.

(*c*) We have nothing to add.

9.—Landlord and Tenant—*Short lease of land on which tenant erects structure—Landlord and Tenant Act*, 1954.

My council owns an amusement park on the foreshore on which they have let sites for amusement arcades. The sites are let for periods of three years on terms that the tenants shall erect their own buildings and shall be entitled to remove them on the expiration of the terms. The leases expire on March 31, and the question has arisen whether part II of the Landlord and Tenant Act, 1954, applies to the tenancies. Section 23 of the Act applies the provisions of the Act to " any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes."

Clearly an amusement arcade is a business, but throughout part II of the Act " premises " appear to be referred to as meaning buildings only, and s. 23 appears to distinguish between property and premises. If this view is correct then the property comprised in the tenancies is land only, and does not include premises (buildings) and the Act does not apply. In support of this view it is submitted that these leases are similar in all but length of term to ground leases for, say, 99 years and that this Act was not intended to deal with the question of ground leases of any property other than residential property.

Your views on this matter would be much appreciated.

ELDSO.

Answer.

We doubt whether the analogy suggested between these lettings and a ground lease is sound. We had a similar query at 119 J.P.N. 823; as we said there and at p. 253, *ante*, we consider, for reasons given, that the lettings are within part II.

10.—Local Government (Miscellaneous Provisions) Act, 1953, s. 10—*Closing order—Determination.*

Subsection (3) enables a local authority to revoke a closing order made under subs. (1) and make a demolition order under s. 11 of the Housing Act, 1936, without further compliance with the provisions of subss. (1) to (3) of that section. Is it permissible, in any other circumstances, for a local authority to determine a closing order made under s. 10 of the 1953 Act? A.S.G.D.

Answer.

Not unless s. 12 (1) (*b*) of the Housing Act, 1936, is applied by subs. (4) of the section in the query.

11.—Magistrates—*Jurisdiction and powers—Costs—Summons for threats by A.B. against C.D.—Power to award costs.*

AB summons CD for having used threats towards him, whereby he apprehends he goes in danger of his life, or of some bodily harm that he will do or cause to be done unto him, against the peace, etc.

If the case is proved, the result can only be that the defendant is bound over (with or without sureties) to keep the peace and be of good behaviour towards all Her Majesty's subjects, and it is sometimes added, "especially the complainant." Do you consider that this is the exercise of the power "on the complaint of any person to adjudge any other person to enter into a recognizance, with or without sureties, to keep the peace or to be of good behaviour towards the complainant, exercisable by order on complaint?" (*see* the Magistrates' Courts Act, 1952, s. 91 (1)). If so, costs may be awarded under s. 55.

On the other hand, if the application is really one for the exercise by the magistrates of powers derived from the Commission of the Peace "to cause to come before them all those who, to any one or more of our people concerning their bodies or the firing of their houses have used threats, to find sufficient security for their peace or their good behaviour towards us and our people"; or possibly from the Statute 34 Edward III. C.1 "to take of all them that be not of good fame . . . sufficient surety . . ." there appears to be no power to award costs to either party. *Stone*, 88th edn. at p. 295, invoking s. 55, expresses, however, a contrary view. I.P.J.H.

Answer.

Whatever may be the origin of the power to require sureties in such a case, s. 91 (1), Magistrates' Courts Act, 1952 (following s. 25, Summary Jurisdiction Act, 1879) lays down the procedure and makes it clear that in exercising this power the court is hearing a complaint for an order, and costs may be awarded.

12.—Solicitor—*Mortgages created by local authorities.*

My council are considering giving public notice inviting persons to make loans to them on mortgage. Such mortgages will be in the form prescribed pursuant to s. 205 of the Local Government Act, 1933, as contained in S.R. & O. 1934 No. 620. Will you please advise whether I am debarred by statute from preparing the prescribed form of mortgage for execution in such cases by virtue of the fact that I am neither solicitor nor barrister.

AMSHOR.

Answer.

Yes, in our opinion: *see Beeston and Stapleford U.D.C.* v. *Smith* [1949] 1 All E.R. 394; 113 J.P. 160.

13.—Tort—*Damage to highway—Consequent injury to users of highway.*

A client of ours was returning home one night and fell and fractured his wrist. The fall was caused by uneven and broken footpath flags, which had been caused by the wheels of a heavy waggon owned by fairground people being driven across the footpath whilst the waggon was negotiating the corner. The weight of the lorry must have broken some of the pavement flags and made the remainder very uneven.

The county borough council is the highway authority and also the lighting authority. The pavement has never been repaired since it was broken by the fairground lorry and, as the stretch of road is not very well lighted, the obstruction was not apparent to our client as he was walking along the footpath and, as a result, he tripped and fell heavily. Has he a claim against the highway authority or the fairground company? BUNDER.

Answer.

We assume for purposes of our answer on the one hand that there is no doubt about the identity of the vehicle, and on the other hand that, when driven over the pavement, it was not crossing into or out of adjacent premises where it had a right to go: *St. Mary Newington* v. *Jacobs* (1871) 25 L.T. 800; *Marshall* v. *Blackpool Corporation* (1935) 98 J.P. 376.

First, as to the highway authority. We do not think there is a right of action against them: *Cowley* v. *Newmarket Local Board* (1892) 56 J.P. 805.

As regards lighting, we do not think an action would succeed. We suppose the lighting to have been of the same standard as before the damage. As the damage to the pavement was not done by the council, we think the case is distinguishable from some cases in the war and since, about the lighting of shelters and other works of the local authority.

As against the owner of the vehicle, your client has in our opinion a ground of action: *Vanderpant* v. *Mayfair Hotel Co.* (1930) 94 J.P. 33, subject to his establishing the effective cause. The defence may contend that many vehicles contributed to breaking the pavement.

14.—Village Green—*Control by rural district council—Participation by parish council.*

The village greens in a certain parish belong to the lord of the manor as part of the waste of the manor, and in 1931 he let the greens to the rural district council at a rent of one shilling a year, the council undertaking "to protect the greens from encroachments and damage and to indemnify the landlord against any claims which may be made against him in respect of user or restraint of user thereof." I have not traced any authority for a rural district council to assume such a liability, but no expenditure apart from the rent has been incurred and this payment has not been questioned at audit.

It has been suggested that a new agreement be made giving the rural district council full powers of management over the village greens, with a view to the delegation of those powers or part of them, to the parish council.

1. Can you quote any authority under which the rural district council may have entered into the existing agreement?

2. Has the rural district council power to enter into a new agreement as suggested and to pay all the costs of the agreement, charging them to the parish?

3. Has the parish council power to spend money on the maintenance and management of the greens in the event of the rural district council's being able to rent them and delegate to the parish council?

4. The parish council would appear to have power to rent the greens direct from the lord of the manor and to spend money on maintenance and management, but the rural district council wishes to retain some control if legally possible. DACKA.

Answer.

1. A rural district council can exercise the powers of the Open Spaces Act, 1906, and s. 9, with the definition of "open space" in s. 20, seems to provide authority for what has been done so far.

2. We do not think the rural district council can charge the parish council as suggested.

3. Again, the Act does not seem to contemplate delegation, but *see* s. 9 and also s. 16 of the Act. The parish council cannot, however, act unless an order is made under s. 1 by the county council.

4. The regular course in these cases is for the parish council to use s. 8 of the Local Government Act, 1894, which gives them specific power. We doubt whether retention of some degree of control by the rural district council has any advantage to offset the complications of using powers which, when the Act of 1894 already existed, cannot have been designed for such a case.